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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS : W.J.E. Van Den Dungen, et al.
SERIAL NO. : 09/890,486
FILED : December 28, 2001
TITLE : APPARATUS FOR MANUFACTURING CO-EXTRUDED
FOOD PRODUCTS AND METHOD FOR
MANUFACTURING A CO-EXTRUDED FOOD PRODUCT

Group/A.U. : 1761
Examiner : Drew E. Becker
Conf. No. : 1769
Docket No. : P06504US0

Mail Stop Appeal - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY TO EXAMINER'S ANSWER

The Examiner has maintained his rejection of claims 47-57 in part under 35 U.S.C. § 103 as being unpatentable over W0 99/13729 ('729) in view of W0 93/12660 ('660). In response to Applicant's argument that there is no motivation or suggestion, the Examiner has stated that:

In this case, W0 99/13729 teaches a method of producing sausage links, while W0 93/12660 teaches a method of making sausage links which undergo a coagulation treatment prior to separating the links and prevents rupture during processing (page 1, line 12 to page 2, line 12).

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on this 27th day of September, 2004.

Timothy J. Zarley

(Examiner's Answer, page 8). The cited portion of the '660 reference, however, does not provide a motivation or suggestion to combine the references to arrive at Applicant's invention as set forth in claim 47.

Specifically, claim 47 requires, in part, the step of "separating the string of food product into separate units before subjecting these to the coagulation treatment".

Thus, the '660 reference teaches away from what is claimed by Applicant by disclosing that the sausage links undergo a coagulation treatment prior to separating the links.

A factor cutting against a finding of motivation to combine or modify the prior art is when the prior art teaches away from the claimed combination. A reference may be said to teach away when a person of ordinary skill, upon reading the reference would be discouraged from following the path set out in the reference or would be led in a direction divergent from the path that the Applicant took. In re Gurley, 27 F.3d 551, 31 U.S.P.Q. 2d 1130, 1131 (Fed. Cir. 1994). Accordingly, upon reading the '660 reference, one skilled in the art would be led on a path divergent (i.e., providing a coagulation treatment "prior to" separating the links), from the path taken by the Applicant which was to separate the string of food into separate units

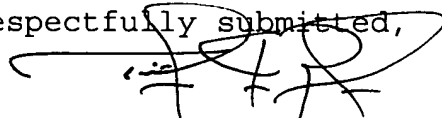
before subjecting these to the coagulation treatment as is required by claim 47.

The '079 reference also teaches away from Applicant's invention as set forth in claim 47. Specifically, the '079 reference teaches that prior to being divided into separate sausage units "a co-extrusion device produces a continuous string of sausage material, the interior of which is formed by the filling or the stuffing which is provided by the co-extrusion device with a skin". (Page 11, line 35 to page 12, line 2). Well-known in the art is that a skin is formed on a co-extruded sausage through the process of coagulation. For example, U.S. Patent No. 5,928,739 teaches that a skin is formed as a result of a coagulation treatment. Specifically, the '739 patent teaches "[d]uring the hot smoking, a skin forms as a result of protein coagulation. (Col. 2, lines 39-40). Accordingly, the '079 reference, like the '660 reference, teaches away from the invention by providing a coagulation treatment (e.g., to form a collagen skin) "prior to" separating the sausage material into separate sausage units. Thus, one skilled in the art would have been led down a path divergent from that taken by the Applicant and therefore, there is no suggestion to combine the references to arrive at a method having the step of

separating the string of food product into separate units before subjecting these to the coagulation treatment as is required by claim 47. Since there is no suggestion or motivation to combine the cited references, the Examiner's rejection cannot stand and must be withdrawn.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account 50-2098.

Respectfully submitted,



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